

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF REGISTRATION)
FOR THE HEALING ARTS,)
)
Petitioner,)
)
vs.) No. 12-0041 HA
)
ALLISON CROCKER,)
)
Respondent.)

DECISION

We find that there is not cause to discipline Allison Crocker’s speech language pathology (“SLP”) license.

Procedure

The State Board of Registration for the Healing Arts filed a complaint on January 10, 2012, seeking to discipline Crocker’s SLP license. Crocker filed her answer on February 14, 2012. We held a hearing on February 1, 2013. Frank Meyers and Sarah Schappe represented the Board. Jim McNabb represented Crocker. This case became ready for decision on May 16, 2013, when the last written argument was filed.

Findings of Fact

1. Crocker had a valid SLP license at all times relevant to this action.
2. Crocker has been a speech pathologist for 35 years.

3. Crocker worked for Ozark Medical Center in West Plains, Missouri, in 2008 and 2009.
4. As part of her job with Ozark Medical Center, Crocker was assigned to provide SLP services at Dora Elementary School.
5. Crocker provided services to students who had an Individualized Education Plan (“IEP”) for students with disabilities.
6. Dora Elementary had a “sign-in/sign-out” page for visitors.
7. Crocker never received any instruction from Ozark Medical on how to (or whether to) use Dora Elementary’s sign-in.
8. The “sign-in/sign-out” pages do not accurately reflect Crocker’s arrival or departure from Dora Elementary.
9. Crocker occasionally signed in and out when she passed the school office, not when she actually entered or left the school.
10. When she arrived at Dora Elementary, Crocker usually went straight to the therapy room because she was carrying lots of materials.
11. The following chart shows Crocker’s billed hours and her sign-in times on the school’s “sign-in/sign-out” page for the dates in question:

<u>Date</u>	<u>Time on “sign-in” page</u>	<u>Time billing began</u>	<u>Student</u>
October 2, 2008	9:30 AM	9:30 AM	M.N., D.B.
October 23, 2008	9:30 AM	9:30 AM	M.N., D.B.
October 28, 2008	9:30 AM	9:40 AM	D.B.
October 30, 2008	9:30 AM	9:30 AM	D.B.
November 13, 2008	10:45 AM	9:40 AM	M.N.
November 20, 2008	9:45 AM	9:45 AM	M.N.
November 25, 2008	9:50 AM	9:50 AM	D.B.
December 2, 2008	9:30 AM	9:30 AM	D.B.
December 4, 2008	9:30 AM	9:30 AM	D.B.
December 9, 2008	9:30 AM	9:30 AM	M.N.
December 11, 2008	9:40 AM	9:30 AM	M.N.
December 18, 2008	10:10 AM	10:30AM	M.N.

January 6, 2009	9:45 AM	9:45 AM	M.N.
January 8, 2009,	9:30 AM	9:30 AM	M.N.
January 15, 2009	9:50 AM	9:30 AM	M.N.
February 3, 2009	9:45 AM	9:40 AM	D.B.

12. The following chart shows Crocker’s billed hours and her sign-out times on the school’s “sign-in/sign-out” page for the dates in question:

<u>Date</u>	<u>Time on “sign-out” page</u>	<u>Time billing ended</u>	<u>Student</u>
October 16, 2008	3:00 PM	3:00 PM	L.C.
December 2, 2008	3:00 PM	1:30 PM	L.C.
February 5, 2009	3:00 PM	3:00 PM	W.N.
February 17, 2009	1:00 PM	1:00 PM	L.C.
February 19, 2009	3:00 PM	3:00 PM	W.N.
February 26, 2009	3:00 PM	3:00 PM	W.N.

13. Crocker’s records for February 5, 2009, show that she provided group therapy to D.B. and M.N. from 10:00 AM to 10:45 AM.

14. Crocker’s records for February 5, 2009, show that she provided individual therapy to T.C. from 10:10 AM to 10:45 AM.

15. Crocker’s records for February 19, 2009, show that she provided group therapy to D.B. from 9:40 AM to 10:10 AM and group therapy to M.N. from 9:30 AM to 10:00 AM.

16. Ozark Medical Center had to reimburse Dora Elementary \$10,552.50 based on Crocker’s record keeping errors.

Conclusions of Law

We have jurisdiction over this case.¹ The Board has the burden of proof by a preponderance of the evidence.²

¹Section 621.045, RSMo Supp. 2012. Statutory citations are to the 2000 version of the Missouri Revised Statutes unless otherwise noted.

² See *Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

The Board alleges that Crocker is subject to discipline under § 345. 065.2(4), (5), (13), (16), and (20):

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by sections 345.010 to 345.080 or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 345.010 to 345.080;

(13) Violation of any professional trust or confidence;

(16) Willfully making or filing a false report or record in the practice of speech-language pathology or audiology;

(20) Committing any act of dishonorable, immoral or unprofessional conduct while engaging in the practice of speech-language pathology or audiology[.]

Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession.³ Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.”⁴ Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.⁵ Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.⁶ It necessarily includes dishonesty, which is a lack of integrity

³ *Albanna v. State Bd. of Reg'n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. banc 2009).

⁴ *Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm'n Nov. 15, 1985) at 125, *aff'd*, 744 S.W.2d 524 (Mo.App. E.D. 1988).

⁵ *Id.* at 533.

⁶ *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

or a disposition to defraud or deceive.⁷ Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.⁸

A. Count I

The Board alleges that Crocker provided services beginning at, or before, the time she signed in on Dora Elementary's sign-in sheet on October 2, 23, 28, and 30, 2008, November 12, 20, and 25, 2008, December 9, 11, and 18, 2008, January 6, 8, 15, and 3, 2009, and February 3, 2009. The Board alleges that Crocker provided services up to the time she signed out of Dora Elementary: October 16, 2008, December 2, 2008, and February 5, 17, 19, and 26, 2008. The Board contends that Crocker could not have provided services before she arrived at the school and that it was impossible for her to provide treatment immediately after arriving and immediately before departing. The Board contends that this conduct is cause for discipline under § 345.065.2(4), (5), (13), (16), and (20).

The Board's allegations are based entirely on whether the "sign-in/sign-out" pages at Dora Elementary are an accurate representation of Crocker's arrival and departure times. We find that they are not accurate. We find Crocker's testimony about the "sign-in/sign-out" pages credible. Crocker testified that she did not always sign in at the time that she arrived at the school; "most of the days [she] went right to the therapy room because [she] was carrying a lot of materials."⁹ Crocker "never put a real thought about signing in the minute [she] arrived at the school."¹⁰ Crocker also did not always sign out at the time she was leaving the school. She also rounded the time she left to the nearest five minutes. Crocker was never instructed by her

⁷ Merriam-Webster's Collegiate Dictionary 359 (11th ed. 2004).

⁸ *Id.* at 794.

⁹ Tr. 39.

¹⁰ *Id.*

superiors that the school sign-in sheets were necessary as part of her job.¹¹ Thus, we find that the times on the billing sheets, Pet. Ex. 3-7, are accurate and the “sign-in/sign out” pages are not.

This factual determination neatly resolves all of the legal issues. Section 345.065.2(4) requires a showing of fraud, deception or misrepresentation. Subsection (5) requires a showing of incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty. Subsection (20) prohibits “dishonorable, immoral or unprofessional conduct.” Crocker properly billed for time that she provided services to students. There is no cause for discipline under subsections (4), (5), and (20).

Subsection (13) requires a violation of a professional trust or confidence. Professional trust is reliance on the special knowledge and skills that professional licensure evidences.¹² It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.¹³ The fact that the times on the school sign-in sheets were not accurate is not a violation of professional trust, particularly because Crocker’s employer never instructed to use the sign-in sheet or gave her any instruction about the sign-in sheet.

Subsection (16) requires “willfully making or filing a false report or record in the practice of speech-language pathology.” Crocker did not make a false report on the documents that she submitted to her employer. There is no cause for discipline under subsection (16).

We find no cause for discipline under § 364.065 with respect to Count I.

B. Count II

The Board alleges that Crocker committed two billing errors. Crocker’s records for February 5, 2009, show that she provided group therapy to D.B. and M.N. from 10:00 AM to 10:45 AM. Crocker’s records for February 5, 2009, also show that she provided individual

¹¹ Tr. 38.

¹² *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

¹³ *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo.App. E.D. 1989).

therapy to T.C. from 10:10 AM to 10:45 AM. Crocker's records for February 19, 2009, show that she provided group therapy to D.B. from 9:40 AM to 10:10 AM and group therapy to M.N. from 9:30 AM to 10:00 AM. The Board contends that these errors are cause for discipline under § 345.065.2(4), (5), (13), (16), and (20).

We do not find fraud, deception, or misrepresentation here. Based on the evidence before us, as well as our observation of Crocker, we do not believe that Crocker intended to lie about or misrepresent her time spent with her clients. Further, we find that Crocker did not bill any outside agency and that she never prepared, saw, or monitored any bills that went out. Thus, she did not attempt to obtain any money or other things through deceit, fraud, or misrepresentation. While Crocker may have erred in her record keeping, those errors do not rise to the level of deceit.

We also do not find incompetency, which is a "state of being" showing that a professional is unable or unwilling to function properly in the profession.¹⁴ Crocker committed two clerical errors here. Two clerical errors do not show incompetence. Her clerical errors also do not constitute gross negligence. Thus, there is no cause for discipline under § 345.065.2(4) or (5).

We find that Crocker's errors were not intentional. We thus find no cause for discipline under § 345.065.2(16). Her clerical errors do not rise to the level of dishonorable, immoral or unprofessional conduct, and there is no cause for discipline under § 345.065.2(20).

Professional trust is reliance on the special knowledge and skills that professional licensure evidences.¹⁵ It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.¹⁶

¹⁴ *Albanna v. State Bd. of Reg'n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. 2009).

¹⁵ *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

¹⁶ *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo.App. E.D. 1989).

Crocker did not violate her duty of professional trust. Her failure to properly account for therapy sessions caused her employer to have to reimburse Dora Elementary, but given the lack of instruction from her employer on its billing practices, that is the appropriate result. Crocker is not subject to discipline.

C. Count III

The Board alleges that Crocker failed to adequately document progress and treatment for patients D.B., T.C., M.N., W.N., and L.C. The Board contends that this error is cause for discipline under § 345.065.2(13) and (20).

The Board provided us with very limited records. We have only papers entitled “progress notes.”¹⁷ Crocker testified that her progress notes were up to professional standards. Pam Ream, a speech pathologist for almost 30 years, testified that Crocker’s progress notes were not up to professional standards. The evidence is evenly balanced, both Crocker and Ream are experts, and we find that both witnesses are credible on this point.

“‘Preponderance of the evidence’ is defined as that degree of evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not.”¹⁸ “Plaintiff does not [satisfy the burden of proof by the preponderance of the evidence] by building up or merely creating an equipoise ... Even that would be insufficient; he must have a preponderance.”¹⁹

The evidence on this point is in equipoise and gives no advantage to either side. Therefore, the Board has failed to prove its case by a preponderance of the evidence. As a result,

¹⁷ Pet. Ex. 3-7.

¹⁸ *Id.*, quoting *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo.App. W.D.2000) (further citation omitted).

¹⁹ *Duggan v. Toombs-Fay Sash & Door Co.*, 66 S.W.2d 973, 976 (Mo.App. Spr. D. 1933).

we conclude that Crocker adequately monitored her patients' treatment and progress. Crocker thus is not subject to discipline under § 345.065.2(13) or (20).

Conclusion

We find that Crocker is not subject to discipline.

SO ORDERED on September 13, 2013.

\s\Nimrod T. Chapel, Jr.
NIMROD T. CHAPEL, JR.
Commissioner